

1 **H. B. 2955**

2
3 (By Delegates Caputo and Barker)

4 (By Request of the Department Environment Protection)

5 [Introduced February 1, 2011; referred to the

6 Committee on Energy, Industry and Labor, Economic
7 Development and Small Business then Finance.]

8
9
10 A BILL to amend and reenact §22-3-7, §22-3-8 and §22-3-19 of the
11 Code of West Virginia, 1931, as amended, all relating to
12 environmental resources; surface coal mining and reclamation
13 act; and fees assessed to coal mining operators by the
14 Division of Mining and Reclamation.

15 *Be it enacted by the Legislature of West Virginia:*

16 That §22-3-7, §22-3-8 and §22-3-19 of the Code of West
17 Virginia, 1931, as amended, be amended and reenacted to read as
18 follows:

19 **ARTICLE 3. SURFACE COAL MINING AND RECLAMATION ACT.**

20 **§22-3-7. Notice of intention to prospect, requirements therefor;**
21 **bonding; secretary's authority to deny or limit;**
22 **postponement of reclamation; prohibited acts;**
23 **exceptions.**

24 (a) Any person intending to prospect for coal in an area not

1 covered by a surface-mining permit, in order to determine the
2 location, quantity or quality of a natural coal deposit, making
3 feasibility studies or for any other purpose, shall file with the
4 ~~director~~ secretary, at least fifteen days prior to commencement of
5 any disturbance associated with prospecting, a notice of intention
6 to prospect, which notice shall include a description of the
7 prospecting area, the period of supposed prospecting and ~~such~~ any
8 other information as required by rules promulgated pursuant to this
9 section: *Provided*, That prior to the commencement of ~~such~~
10 prospecting, the ~~director~~ secretary may issue an order denying or
11 limiting permission to prospect where the ~~director~~ secretary finds
12 that prospecting operations will damage or destroy a unique natural
13 area, or will cause serious harm to water quality, or that the
14 operator has failed to satisfactorily reclaim other prospecting
15 sites, or that there has been an abuse of prospecting by previous
16 prospecting operations in the area.

17 (b) Notice of intention to prospect shall be made in writing
18 on forms prescribed by the ~~director~~ secretary and shall be signed
19 and verified by the applicant. The notice shall be accompanied by:
20 (1) A United States Geological Survey topographic map showing by
21 proper marking the crop line and the name, where known, of the seam
22 or seams to be prospected; and (2) a bond, or cash, or collateral
23 securities or certificates of the same type and form and in the
24 same manner as provided in section eleven of this article, in the

1 amount of five hundred dollars per acre or fraction thereof for the
2 total estimated disturbed area. If ~~such~~ the bond is used, it shall
3 be payable to the State of West Virginia and conditioned that the
4 operator faithfully perform the requirements of this article as
5 they relate to backfilling and revegetation of the disturbed area.

6 (c) Any person prospecting under the provisions of this
7 section shall ensure that ~~such~~ the prospecting operation is
8 conducted in accordance with the performance standards in section
9 thirteen of this article for all lands disturbed in explorations,
10 including excavations, roads, drill holes, and the removal of
11 necessary facilities and equipment.

12 (d) Information submitted to the ~~director~~ secretary pursuant
13 to this section as confidential, concerning trade secrets or
14 privileged commercial or financial information, which relates to
15 the competitive rights of the person or entity intended to prospect
16 the described area, is not available for public examination.

17 (e) Any person who conducts any prospecting activities which
18 substantially disturb the natural land surface in violation of this
19 section or rules issued pursuant thereto is subject to the
20 provisions of sections sixteen and seventeen of this article.

21 (f) ~~No~~ An operator ~~shall~~ may not remove more than two hundred
22 fifty tons of coal without the specific written approval of the
23 ~~director~~ secretary. Such approval shall be requested by the
24 operator on forms prescribed by the ~~director~~ secretary. The

1 ~~director~~ secretary shall promulgate rules governing such operations
2 and setting forth information required in the application for
3 approval. Each such application shall be accompanied by a \$2000
4 filing fee.

5 (g) The bond accompanying said notice of intention to prospect
6 shall be released by the ~~director~~ secretary when the operator
7 demonstrates that a permanent species of vegetative cover is
8 established.

9 (h) ~~In the event~~ If an operator desires to mine the area
10 currently being prospected, and has requested and received an
11 appropriate surface mine application (S.M.A.) number, the ~~director~~
12 secretary may permit the postponement of the reclamation of the
13 area prospected. Any part of a prospecting operation, where
14 reclamation has not been postponed as provided above, shall be
15 reclaimed within a period of three months from disturbance.

16 (i) For the purpose of this section, the word "prospect" or
17 "prospecting" does not include core drilling related solely to
18 taxation or highway construction.

19 **§22-3-8. Prohibition of surface mining without a permit; permit**
20 **requirements; successor in interest; duration of**
21 **permits; proof of insurance; termination of permits;**
22 **permit fees.**

23 (a) No person may engage in surface mining operations unless
24 he or she has first obtained a permit from the ~~director~~ secretary

1 in accordance with the following:

2 (1) All permits issued pursuant to the requirements of this
3 article shall be issued for a term not to exceed five years:

4 *Provided*, That if the applicant demonstrates that a specified
5 longer term is reasonably needed to allow the applicant to obtain
6 necessary financing for equipment and the opening of the operation,
7 and if the application is full and complete for the specified
8 longer term, the ~~director~~ secretary may extend a permit for a
9 longer term: *Provided, however*, That subject to the prior approval
10 of the ~~director~~ secretary, with the approval being subject to the
11 provisions of subsection (c), section eighteen of this article, a
12 successor in interest to a permittee who applies for a new permit,
13 or transfer of a permit, within thirty days of succeeding to the
14 interest and who is able to obtain the bond coverage of the
15 original permittee, may continue surface mining and reclamation
16 operations according to the approved mining and reclamation plan of
17 the original permittee until the successor's permit application or
18 application for transfer is granted or denied.

19 (2) Proof of insurance is required on an annual basis.

20 (3) A permit terminates if the permittee has not commenced the
21 surface mining operations covered by the permit within three years
22 of the date the permit was issued: *Provided*, That the ~~director~~
23 secretary may grant reasonable extensions of time upon a timely
24 showing that the extensions are necessary by reason of litigation

1 precluding commencement, or threatening substantial economic loss
2 to the permittee, or by reason of conditions beyond the control and
3 without the fault or negligence of the permittee: *Provided,*
4 *however,* That with respect to coal to be mined for use in a
5 synthetic fuel facility or specific major electric-generating
6 facility, the permittee shall be considered to have commenced
7 surface mining operations at the time the construction of the
8 synthetic fuel or generating facility is initiated.

9 (4) Each application for a new surface mining permit filed
10 pursuant to this article shall be accompanied by a fee of ~~\$1,000~~
11 \$3,000. All permit fees and renewal fees provided in this section
12 or elsewhere in this article shall be collected by the ~~director~~
13 secretary and deposited with the Treasurer of the State of West
14 Virginia to the credit of the Operating Permit Fees Fund and shall
15 be used, upon requisition of the ~~director~~ secretary, for the
16 administration of this article.

17 (5) Prior to the issuance of any permit, the ~~director~~
18 secretary shall ascertain from the Commissioner of the Division of
19 Labor whether the applicant is in compliance with section fourteen,
20 article five, chapter twenty-one of this code. Upon issuance of
21 the permit, the ~~director~~ secretary shall forward a copy to the
22 Commissioner of the Division of Labor, who shall assure continued
23 compliance under the permit.

24 (6) (A) Prior to the issuance of any permit the ~~director~~

1 secretary shall ascertain from the Executive Director of Workforce
2 West Virginia and the Insurance Commissioner whether the applicant
3 is in compliance with the provisions of section six-c, article two,
4 chapter twenty-one-a of this code and section five, article two,
5 chapter twenty-three of this code with regard to any required
6 subscription to the Unemployment Compensation Fund or to the
7 Workers' Compensation Fund, the payment of premiums and other
8 charges to the fund, the timely filing of payroll reports and the
9 maintenance of adequate deposits. If the applicant is delinquent
10 or defaulted, or has been terminated by the executive director or
11 the Insurance Commissioner, the permit may not be issued until the
12 applicant returns to compliance or is restored by the executive
13 director or the Insurance Commissioner under a reinstatement
14 agreement: *Provided*, That in all inquiries the Executive Director
15 of Workforce West Virginia and the Insurance Commissioner shall
16 make response to the Department of Environmental Protection within
17 fifteen calendar days; otherwise, failure to respond timely is
18 considered to indicate the applicant is in compliance and the
19 failure will not be used to preclude issuance of the permit.

20 (B) It is a requirement of this article that each operator
21 maintain continued compliance with the provisions of section five,
22 article two, chapter twenty-three of this code and section six-c,
23 article two, chapter twenty-one-a of this code and provide proof of
24 compliance to the ~~director~~ secretary on a quarterly basis.

1 §22-3-19. **Permit revision and renewal requirements; incidental**
2 **boundary revisions; requirements for transfer;**
3 **assignment and sale of permit rights; and operator**
4 **reassignment; and procedures to obtain inactive**
5 **status.**

6 (a) (1) Any valid permit issued pursuant to this article
7 carries with it the right of successive renewal upon expiration
8 with respect to areas within the boundaries of the existing permit.
9 The holders of the permit may apply for renewal and the renewal
10 shall be issued: *Provided*, That on application for renewal, the
11 burden is on the opponents of renewal, unless it is established
12 that and written findings by the ~~director~~ secretary are made that:
13 (A) The terms and conditions of the existing permit are not being
14 satisfactorily met: *Provided, however*, That if the permittee is
15 required to modify operations pursuant to mining or reclamation
16 requirements which become applicable after the original date of
17 permit issuance, the permittee shall be provided an opportunity to
18 submit a schedule allowing a reasonable period to comply with such
19 revised requirements; (B) the present surface-mining operation is
20 not in compliance with the applicable environmental protection
21 standards of this article; (C) the renewal requested substantially
22 jeopardizes the operator's continuing responsibility on existing
23 permit areas; (D) the operator has not provided evidence that the
24 bond in effect for said operation will continue in effect for any

1 renewal requested as required pursuant to sections eleven or twelve
2 of this article; or (E) any additional revised or updated
3 information as required pursuant to rules promulgated by the
4 ~~director~~ secretary has not been provided.

5 (2) If an application for renewal of a valid permit includes
6 a proposal to extend the surface-mining operation beyond the
7 boundaries authorized in the existing permit, that portion of the
8 application for renewal which addresses any new land area is
9 subject to the full standards of this article, which includes, but
10 is not limited to: (A) Adequate bond; (B) a map showing the
11 disturbed area and facilities; and (C) a reclamation plan.

12 (3) Any permit renewal shall be for a term not to exceed the
13 period of time for which the original permit was issued.
14 Application for permit renewal shall be made at least one hundred
15 twenty days prior to the expiration of the valid permit.

16 (4) Any renewal application for an active permit shall be on
17 forms prescribed by the ~~director~~ secretary and shall be accompanied
18 by a filing fee of ~~two thousand dollars~~ \$2,500. The application
19 shall contain such information as the ~~director~~ secretary requires
20 pursuant to rule.

21 (b) (1) During the term of the permit, the permittee may submit
22 to the ~~director~~ secretary an application for a revision of the
23 permit, together with a revised reclamation plan.

24 (2) An application for a significant revision of a permit is

1 subject to all requirements of this article and rules promulgated
2 pursuant thereto and shall be accompanied by a filing fee of \$500.

3 (3) Any extension to an area already covered by the permit,
4 except incidental boundary revisions, shall be made by application
5 for another permit. If the permittee desires to add the new area
6 to his or her existing permit in order to have existing areas and
7 new areas under one permit, the ~~director~~ secretary may so amend the
8 original permit: *Provided*, That the application for the new area
9 is subject to all procedures and requirements applicable to
10 applications for original permits under this article and a filing
11 fee of \$500.

12 (c) The ~~director~~ secretary shall review outstanding permits of
13 a five-year term before the end of the third year of the permit.
14 Other permits shall be reviewed within the time established by
15 rules. The ~~director~~ secretary may require reasonable revision or
16 modification of the permit following review: *Provided*, That such
17 revision or modification shall be based upon written findings and
18 shall be preceded by notice to the permittee of an opportunity for
19 hearing.

20 (d) No transfer, assignment or sale of the rights granted
21 under any permit issued pursuant to this article ~~shall~~ may be made
22 without the prior written approval of the ~~director~~ secretary,
23 application for which shall be accompanied by a filing fee of
24 \$1,500 for transfer or \$1,000 for assignment.

1 (e) Each request for inactive status shall be submitted on
2 forms prescribed by the secretary, shall be accompanied by a filing
3 fee of \$500, and shall be granted in accordance with the procedure
4 established in the *Surface Mining and Reclamation Rule*.

NOTE: The purpose of this bill is to authorize the Division of Mining and Reclamation to assess certain fees to coal mine operators.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.